

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)

MM DOCKET NO. 93-107

DAVID A. RINGER)

File Nos. BPH-911230MA

et al.)

et al.

For Construction Permit)

Channel 280A)

Westerville, Ohio)

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To: Administrative Law Judge
Walter C. Miller

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**MASS MEDIA BUREAU'S OPPOSITION TO
MOTION TO ENLARGE ISSUES AGAINST RINGER**

1. On May 17, 1993, Ohio Radio Associates, Inc. ("ORA") filed a motion to enlarge issues against David A. Ringer ("Ringer"). The Mass Media Bureau opposes ORA's motion and submits the following comments.

2. In essence, ORA seeks addition of the following issues:

1. To determine whether Ringer violated Section 73.215 of the Commission's Rules.

2. To determine whether Ringer proposes a tower site in violation of Section 73.207 of the Commission's Rules.

3. With respect to the requested Section 73.215 issue, ORA notes that Ringer admits that a small overlap exists between his 48 dBu contour and the 54 dBu contour of Station WTTT-FM, Tiffin,

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Ohio.¹ However, in processing Ringer's application, the Bureau's engineering staff determined that, because the overlap was no greater than that which had existed with the former occupant of the channel, Station WBBY-FM, no issue was warranted. Cf. Royce International Broadcasting, 2 FCC Rcd 1368 (1987). In addition, the Bureau's engineering staff determined that the overlap proposed by Ringer is less than that proposed by applicants Wilburn Industries, Inc. ("Wilburn") and Shellee F. Davis ("Davis"). Inasmuch as no issue concerning the overlap was warranted as to Wilburn and Davis because both met the spacing requirements of Section 73.213, there is no basis for adding the requested issue as to Ringer simply because he did not expressly request processing of his application under Section 73.213.² Accordingly, addition of a Section 73.215 issue is not warranted.

4. With respect to the requested Section 73.207 issue, ORA repeats contentions considered and rejected in the Hearing Designation Order, 8 FCC Rcd 2651 (ASD 1993), and in Memorandum

¹ ORA also inaccurately claims that Ringer's application does not state that he will provide protection to a short-spaced station's contours base on its maximum effective radiated power ("ERP"), contrary to Section 73.215(b)(2)(ii). However, Ringer's application does state that his contour analysis is based on the maximum ERP for Station WTTF-FM, and ORA does not identify any other facility that Ringer should have considered in analyzing compliance with Section 73.215.

² Ringer did note in his application (and the Bureau's engineering staff confirmed) that his proposed site met the separation requirements specified in Section 73.213(c)(1) of the Commission's Rules. See ORA Motion to Enlarge Issues, Attachment 1, p. 2.

Opinion and Order, FCC 93M-224, released May 4, 1993. Such contentions are ordinarily not subject to reconsideration. See Annax Broadcasting Inc., 87 FCC 2d 483, 486 (1981); Section 1.106(a)(1) of the Commission's Rules. Nonetheless, ORA claims that its arguments warrant renewed consideration because of On the Beach Broadcasting, FCC 93-211, released May 10, 1993. Specifically, ORA contends that On the Beach requires that an applicant proposing use of a directional antenna must demonstrate that no fully-spaced sites are available.


5. ORA is wrong. On the Beach affirmed rejection of an amendment which did not comply with Section 73.215(b)(2)(ii), and in the absence of a valid proposal for use of a directional antenna, found that the applicant did not meet the requirements for a waiver of Section 73.207 of the Commission's Rules. Here, Ringer's proposal is in compliance with Section 73.215 (and Section 73.213(c)(1)) and was processed accordingly. Thus, Section 73.207 is inapplicable, and there was no need for Ringer to seek a waiver of that rule or make the showing necessary for grant of such a waiver. See Amendment of Part 73 - Short-Spacing Criteria, 6 FCC Rcd 5356, 5359-60, ¶¶ 24-27 (1991), where the Commission made clear that, because applications could now provide equivalent co-channel and adjacent channel protection by meeting the spacing, power and directional requirements of Section 73.215, it would no longer allow waivers of Section 73.207. In this regard, the cases cited by ORA, all of which

dealt with applications seeking waivers of Section 73.207, are inapposite.

6. Accordingly, the Bureau opposes ORA's motion to enlarge issues.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


James W. Shook
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

June 2, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, hereby certifies that she has on this 2nd day of June, 1993, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Enlarge Issues Against Ringer"** to:

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036

James A. Koerner, Esq.
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Avenue, N.W., Suite 300
Washington, D.C. 20015-2003

Eric S. Kravetz, Esq.
Brown, Finn & Nietert, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036

Kyong Ja Matchak
8300 Rockbury Way
Sacramento, California 95843

Dan J. Alpert, Esq.
1250 Connecticut Avenue, N.W., 7th Floor
Washington, D.C. 20036-2603

Dennis F. Begley, Esq.
Reddy, Begley & Martin
1001 22nd Street, N.W.
Washington, D.C. 20037

John W. Hunter, Esq.
Stephen T. Yelverton, Esq.
McNair & Sanford, P.A.
1155 15th Street, N.W., Suite 400
Washington, D.C. 20005

Michelle C. Mebane
Michelle C. Mebane